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C O N F I D E N T I A L SECTION 01 OF 03 GUATEMALA 000867

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SUBJECT: LETTER FROM GUATEMALA (7)

Classified By: Ambassador John R. Hamilton for reason 1.5 (d)

CAFTA Protests Petering Out...

1. (SBU) Three and a half weeks have passed since Guatemala's Congress ratified CAFTA, without much sign of the second wave of demonstrations promised by a number of NGO leaders. It could be that potential demonstrators joined the rest of Guatemala in taking Semana Santa (Easter week) off, as captured in a political cartoon showing a handful of protestors happily asleep on the beach with their anti-CAFTA protest signs as "Silent Hawk" Secretary Rumsfeld swoops over airdropping "military cooperation," an allusion to the Secretary's March 23-24 visit. Maybe, like the rest of the

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country, they simply haven't gotten back into the swing of things. They called for a massive turnout on April 1 (not known locally as April Fools' Day), but an observer in the Presidency quipped that a roughly equal number of street vendors showed up at the National Palace looking for customers among the protestors. Leaders of the teachers' union had called on members to show up in force, but the government reported that only 5% of teachers were absent from their jobs nationwide. With luck, the worst is now behind us. However, as promised, University of San Carlos "Rector Magnifico" Luis Leal has filed suit in the Constitutional Court challenging CAFTA on grounds that the government and Congress pushed it through behind the people's back. "The people" don't seem to be following his script by complaining, however, and overturning the overwhelming vote of the people's elected Congress seems a stretch, even by the standards of Guatemala's disreputable Constitutional Court.

...But Who Paid the Bills?

2. (SBU) Elite chatter has been recently less concerned over demonstrations or possible CAFTA reversals than with trying to figure out who is financing the opposition. From full color anti-CAFTA supplements in newspapers before the vote, to demonstrators outfitted with identical poles and professionally printed banners, to chartered busses bringing peasant demonstrators to town from the countryside, there is something decidedly not "grassroots" about the matter. Rumored backers include European NGOs, agrarian reform activists (Plataforma Agraria) who received state funds at the end of the Portillo Administration, and Venezuela's Hugo Chavez, who supposedly has given to the far-left URNG. The Dutch Ambassador said that labor union leaders told a visiting Dutch human rights official that "the Americans" were financing them. Nobody seems to have any substantiation for his or her preferred rumor, which conveniently points to his or her preferred bogeyman, but the quality of the logistics appears way out of proportion to the numbers and means of the demonstrators themselves. We will be looking into this further as best we can.

Cleaning out the SAT -- Old Filth or Fresh Rot?

3. (U) Ruling coalition (GANA) deputies called in tax and customs (SAT) chief Carolina Roca to testify on allegations that customs officials had let 142 containers of finished apparel enter the Guatemalan market tax-free. The containers' contents had been manifested as unassembled apparel and were given temporary entry under the maquila regime, supposedly for assembly and re-export. Roca testified March 30 in a closed session with the deputies, who subsequently declared themselves satisfied that Roca was taking all appropriate measures. Most of the people implicated were career employees who had already been transferred to other jobs or had quit pending the investigation that Roca had begun, but attention has centered on a senior advisor, Emilio "Gordo" Pacheco, who has supposed friends in high places in the Berger Administration. Pacheco and Central Customs Administrator Raul Rosales had reportedly ordered lower officials to release the containers. Roca told the press that she had interviewed the lower officials, confronted and fired Rosales, and turned the case over to the Attorney General's office. She said that her preliminary information did not indicate involvement by Pacheco but that she would look further into the matter.

4. (C) We've heard mixed reports on Pacheco. He was

brought in by former SAT chief Willy Zapata to fill a deputy slot as Intendent of Customs, but Pacheco did not meet the statutory requirements for educational credentials (an Economics degree) and was made an advisor instead. He was schooled with a number of Guatemala's elite kids who, now in their mid-thirties, are learning the ways of power. We have found him energetic and on-message with ideas for converting Guatemalan Customs from a corrupt toll-booth operation based on physical inspection to a modern, computerized and information-driven system that minimizes personal discretion. At the same time, we have heard rumblings about favors sought and given when he worked in the late 1990s as a prosecutor against the Moreno smuggling organization, now better known as the Ortega Menaldo organized crime organization. For the moment, we'd be willing to give him the benefit of the doubt if Roca decides to stand by him and charges are not brought. For her part, there's not the slightest indication that she has done anything other than handle this case correctly.

PriceSmart vs. PriceSmart/G  
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15. (SBU) Bulk retailer PriceSmart is engaged in a nasty legal battle with the minority partner in its Guatemalan stores (PriceSmart/G) that threatens serious harm to Guatemala's attempts to build a reputation as a safe place to do business. The root of the problem appears to be a disagreement over the royalties payable by PriceSmart/G to PriceSmart USA for use of the PriceSmart brand. The local partner, a dual U.S. - Guatemalan national with a 34% stake in PriceSmart/G, claims that PriceSmart USA has used improper accounting techniques to take more royalties off the top than allowed by the contract. PriceSmart USA denies the charge and filed for arbitration. PriceSmart USA further claims that the local partner, who was elected to a two-year term as PriceSmart/G president in 2002, filed trumped-up criminal charges against the U.S. directors to prevent them from attending a November 2004 board meeting, where the local partner would have ceded the presidency. The local partner then held an illegal board meeting to reconfirm his position as president, according to PriceSmart USA, and then authorized close to \$2 million of promissory notes payable to himself. When PriceSmart/G failed to pay those notes, the local partner sued and had the company placed in receivership and an associate named as receiver. The local partner then announced to PriceSmart employees that he had taken over. At this point, PriceSmart USA decided to file criminal charges of its own. PriceSmart USA has been in touch with the Deputy Secretary, the U.S. Congress, and Embassy. Embassy has been

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in contact with President Berger, Attorney General Florido, and Commissioner for Investment and Competitiveness Mickey Fernandez to press for a quick and equitable resolution of the conflict. The GoG, in turn, appears to understand that this case, on the eve of CAFTA ratification hearings in our Congress, is a crucial test of the Guatemalan judiciary's ability to manage investment disputes.

16. (SBU) There are signs that matters may be improving and that criminal complaints by both parties may soon be dropped. We gather that the local partner seeks to sell his stake back to PriceSmart USA and may have thought that he could improve his bargaining position by playing legal hardball, Guatemala style, on the advice of his attorneys. His team apparently did not expect to play pros on something other than a Guatemalan sandlot. PriceSmart USA put its side of the story on record when it filed an 8-K form with the SEC to report an incident with a material bearing on its financial well-being. That was promptly reported in some detail by the "San Diego Union" on March 25, with the Guatemalan partner in the role of the villain. The news hit Guatemala's "Prensa Libre" on March 28, and the "Union" story was reprinted in "El Periodico" the following day. The same day, the local partner's attorneys contacted PriceSmart USA's attorneys to say they had been ordered to drop criminal charges if PriceSmart USA would cease its "public attacks" on their client.

17. (C) There is a lesson for Guatemala here with CAFTA on the horizon. Guatemalan businessmen are accustomed to courts that are incompetent or can be bought, and they avoid the spotlight of the press, which isn't routinely reliable and raises their profile in a poor security and high-kidnapping environment. Most are honest and seek only to get by, while others may be predators. However, everybody learns to play by some version of jungle rules, manipulating public institutions when possible rather than counting on them to work. That is not the way of the future. It's worth noting that it wasn't the legal challenges or calls to important people that seemed to turn the tide in this PriceSmart affair, but something as simple as an 8-K filing -- a public document presented, on penalty of perjury, to a U.S. regulatory body and picked up by the press -- that seems to be stopping the problem in its tracks. It would be nice to

think that something similar would happen with a public document filed with a Guatemalan authority, but that is a goal and not yet an accomplishment.

PAN Ousting Ailing Lopez Rodas,  
Vies to be the Party of Business  
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18. (C) PAN Secretary General and 2003 presidential candidate Leonel Lopez Rodas was hospitalized for complications resulting from hypertension, according to press reports. He is said to be improving but is still in intensive care. PAN contacts tell us privately that Lopez is being forced aside so that the party can be rebuilt for the 2007 elections and that his health condition is probably related. Lopez kept the party alive at the grassroots level after Portillo defeated Berger in 1999 and Berger walked away. Berger then took most of the remaining PAN members to his GANA coalition when he was persuaded to run again and Lopez refused to cede the PAN presidential candidacy for the 2003 elections. Lopez is reportedly despondent; he firmly believes he single-handedly saved the party and in all likelihood feels deeply betrayed by his former friends and allies.

19. (C) Former PAN First VP of Congress Ruben Dario Morales and fellow longtime PAN loyalist and Deputy Mario Vasquez tell us that wealthy businessmen led by sugar and rum baron Alejandro Botran have decided that the GANA coalition will never gain traction as long as former banker and Presidential Coordination Secretary Eduardo "Guayo" Gonzalez is the anointed dauphin. The other pretender to the title of "the party of business," Arzu's Unionistas, is too closely associated with the supremely arrogant Arzu for the taste of many businessmen. Arzu's baggage includes his blind spot for his businessman son Roberto, who is widely considered to be irredeemably corrupt. It's still early in the game, but we hear from any number of observers that Berger's GANA is going to have a hard time unifying as a party as long as Gonzalez is seen as its future candidate, leaving the field wide open for creating the Guatemalan version of El Salvador's center-right and pro-business ARENA party, the holy grail of Guatemala's business elite.

Creative Jurisprudence 2, Common Sense 0  
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110. (SBU) Two recent rulings by Guatemala's courts illustrate how far Guatemalan jurisprudence has veered from effective rule of law and common sense. In the first case, four justices of the Constitutional Court determined that a ruling not to lift the parliamentary immunity of a congressional deputy constituted a "matter that has been judged," and that any subsequent trial on facts of the supposed crime would constitute double jeopardy. It was lost on nobody that the plaintiff in the case was FRG congressional leader Aristides Crespo and that the four judges who ruled for him were the same four who cleared General Rios Montt to run as FRG candidate for President in 2003. Crespo was excluded from the trial concerning the violent "Black Thursday" demonstrations because of his congressional immunity; the CC has effectively ruled that he therefore was found innocent. A dissenting CC judge termed the ruling "abominable," and various commentators noted that the effect would be to make immunity permanent rather than a means to defer prosecution of sitting legislators except for the most serious crimes. In the second case, a criminal judge ruled that three gang members charged with murder could refuse to provide DNA samples under constitutional protections against self-incrimination. On that theory, one supposes they could refuse to be photographed, fingerprinted, or appear in a lineup before witnesses. We knew it already, but the courts have a long way to go here.

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